

Section 404 Assumption Feasibility Report Outline – Working DRAFT

6-27-16

Executive Summary

1. Introduction

- 1.1. Overview of Clean Water Act Section 404 Assumption
- 1.2. Water/Wetland Regulations in Minnesota
- 1.3. Assumption Feasibility Study Process

2. Background and Current Issues Related to Section 404 Assumption in Minnesota

- 2.1. Previous Actions Related to Section 404 Assumption in Minnesota
- 2.2. Current Stakeholder Interests and Expectations

3. Required Study Elements

- 3.1. Federal requirements for state assumption of the 404 program
- 3.2. Potential extent of assumption, including those waters that would remain under the jurisdiction of the United States Army Corps of Engineers due to the prohibition of 404 assumption in certain waters as defined in section 404(g)(1) of the federal Clean Water Act
 - 3.2.1 404(g)(1) waters
 - 3.2.2 Indian lands
- 3.3. Differences in waters regulated under Minnesota laws compared to waters of the United States, including complications and potential solutions to address the current uncertainties relating to determining waters of the United States
- 3.4. Measures to ensure the protection of aquatic resources consistent with the Clean Water Act, Wetland Conservation Act, and the public waters program administered by the Department of Natural Resources
- 3.5. Changes to existing state law, including changes to current implementation structure and processes, that would need to occur to allow for state assumption of the 404 program
- 3.6. New agency responsibilities for implementing federal requirements and procedures that would become the obligation of the state under assumption, including the staff and resources needed for implementation
- 3.7. Estimated costs and savings that would accrue to affected units of government
- 3.8. Effect on application review and approval processes and time frames
- 3.9. Alternatives to assumption that would also achieve the goals of regulatory simplification, efficiency, and reduced permitting times
- 3.10. Alternatives to assumption that would also achieve the goals of regulatory simplification, efficiency, and reduced permitting times
- 3.11. Other information as determined by the board and commissioner
 - 3.11.1. Experiences of other states – Pros/cons/barriers to assumption

4. Conclusions (?)

Appendix A. Laws of Minnesota 2015 Special Session Chapter 4, Section 137

Appendix B. Project Work Plan

Appendix C. 2012 Letter from BWSR Executive Director to Chairman of the House Subcommittee on Water Resources and Environment

Appendix D. Code of Federal Regulations Chapter 40, Part 233 – 404, State Program Regulations

Appendix E. Other state experiences with assumption – Summary Table